Supreme Court, U.S.
FILED

94 669 OCT 1 1 1994

OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

YADUNATH B. BADARAYAN,
PETITIONER

VS.

THOMAS DRAKE,
CLEMSON UNIVERSITY
RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

YADUNATH B.BADARAYAN, PRO SE
175 SOUTH REYNOLDS STREET,

#K118

ALEXANDRIA, VA 22304
Tel. (703) 212-7118

No._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

YADUNATH B. BADARAYAN,
PETITIONER

VS.

THOMAS DRAKE,
CLEMSON UNIVERSITY
RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

YADUNATH B.BADARAYAN, PRO SE
175 SOUTH REYNOLDS STREET,

#K118

ALEXANDRIA, VA 22304
Tel. (703) 212-7118

QUESTIONS PRESENTED

1. Whether the Appellate Court, Fourth Circuit, erred in not reversing the dismissal by the U.S. District Court of the petitioner's suit in which he alleged, with concrete evidence as proof, that he was dismissed from Clemson University as a result of seven erroneous and arithmetically incorrect computations of a single grade, clearly constituting gross negligence by the course instructor, Thomas Drake and members of the grievance committee and Clemson University administrators ?

---

2. Whether the Appellate Court, Fourth Circuit, erred in not reversing the dismissal by the U.S. District Court of the petitioner's suit, even upon bearing full knowledge and reviewing concrete evidence provided by the petitioner, of the fact that the statutory limitation of the suit ran from 19 Jan 1990 to 20 Jan 1993 in the worst instance, when the petitioner initially filed his suit on 20 Jan 1993 in a timely manner ?

---

3. Whether the Appellate Court, Fourth Circuit, erred in not reversing the dismissal by the U.S. District Court of the petitioner's suit, even upon bearing full knowledge and

reviewing

concrete evidence provided by the petitioner of the fact that the actual letter of dismissal of the petitioner from Clemson University was dated 19 Jan 1990 and received by the petitioner on or about 25 Jan 1990, clearly making the petitioner's suit filed on 20 Jan 1993, timely and within the three year statute of limitation ?

---

4. Whether the Appellate Court, Fourth Circuit, erred in not reversing the dismissal by the U.S. District Court of the petitioner's suit, by applying and extrapolating irrelevant judgements passed on cases in the past, such as '<u>Nowlin v. General Tel. Co.</u>', '<u>Beaudett v. City of Hampton</u>' and '<u>Santee Portland Cement Co. v. Daniel Int'l Corp.</u>', none of which have any bearing on the unique case of the petitioner ?

5. Whether the Appellate Court, Fourth Circuit, erred in not reversing the dismissal by the U.S. District Court of the petitioner's suit by refusing to recognize the openly blatant 'academic double standards' and 'academic discrimination' still in practice by Clemson University involving favored and preferential treatment of retaining academically deficient student athletes indefinitely, while summarily dismissing the petitioner as a result of an arithmetically incorrect grade in a course, even after the Appellate Court's review of concrete evidence of this alleged fact, provided by the petitioner ?

6. Whether the Appellate Court, Fourth Circuit, erred in not reversing the dismissal by the U.S. District Court of the petitioner's suit by completely ignoring the fact that the petitioner had alleged 'academic double standards' and 'academic discrimination' in his initial suit filed on 20 Jan 1993, well within the three year statute of limitation from March 1990,

the date when the petitioner, for the very first time, acquired knowledge of the aforestated allegations, by reading and retaining as evidence, the Clemson University publication deploring the academic performances of student athletes being given the most preferential and favored treatment in the University ?

---

7. Whether the Appellate Court, Fourth Circuit, erred in not reversing the dismissal by the U.S. District Court of the petitioner's suit, by clearly ignoring the fundamental fact respected even by the Supreme Court of the United States that, in any contractual decision, such as the one in this particular instance, the delivery of the actual letter to the petitioner from Clemson Unversity indicating the final decision made by the President of the University and subsequent letter of dismissal from the University, were not received and read and understood by the petitioner till 19 Jan 1990 and on or about 25 Jan 1990,

respectively, thus clearly making 20 Jan 1993, the actual date when the three year limitation of statute ran out, in the worst instance, even upon reviewing the concrete and physical evidence provided by the petitioner to this effect ?

---

8. Whether the Appellate Court, Fourth Circuit, erred in not reversing the dismissal by the U.S. District Court of the petitioner's suit by completely ignoring and neglecting a fact of clearly national importance to the future of education in the United States; the fact that state funded Universities, such as Clemson University, cannot practice 'academic double standards' and 'academic discrimination' by providing preferential and favored treatment to student athletes as a faction of any student body simply and clearly because those students earn millions of dollars for the Universities, thereby failing to uphold the basic tenet that every state funded University should be managed and run as a non-profit institution of academic excellence and not as a profit-oriented business ?

PARTIES TO THE PROCEEDINGS

The caption of the case in this Court contains the names of all parties to the proceedings in the Fourth Circuit.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDINGS vi

TABLE OF CONTENTS vii

OPINION BELOW 2

JURISDICTION 2

STATEMENT OF THE CASE 3

REASONS FOR GRANTING THE WRIT 15

CONCLUSION 17

INDEX TO APPENDICES

Unpublished, Court of Appeals, FourthCircuit,

16 June, 1994 ..... A-1

Court of Appeals Denial for Rehearing, 13 July, 1994 .... A-2

Petitioner , Yadunath B. Badarayan respectfully prays that the Writ of Certiorari be issued to review the decision of the U.S. Court of Appeals for the Fourth Circuit which refused to disturb the decision of the U.S. District Court that the petitioner's case be dismissed because of the limitations of statute. Further, the Appeals Court for the Fourth Circuit failed to recognize the concrete and physical evidence provided by the petitioner to clearly indicate that the suit had infact been filed in a timely manner and also completely ignored the issues of 'academic double standards' and 'academic discrimination', alleged by the petitioner with full proof of the allegations made.

The U.S. Court of Appeals further applied and extrapolated the rulings and judgements of three completely irrelevant cases in the past in a hasty effort to reach a judgement on the petitioner's case. The petitioner has expounded on all the details later in this petition.

OPINIONS BELOW

The unpublished written opinion of the Court of Appeals appears in Appendix A-1 of this Petition. The Court of Appeals denial of the Petition for Rehearing appears in Appendix A-2.

JURISDICTION

The Court of Appeals' unpublished written opinion in this matter was filed on June 16, 1994. A timely Petition for Rehearing was filed on June 28, 1994. The Court of Appeals' denial of the Petition for Rehearing was issued on July 13, 1994. This Court's jurisdiction is invoked under 28 USC 1332.

STATEMENT OF THE CASE

The issues involve the dismissal of the petitioner, a foreign national, from Clemson University in Jan 1990, as a result of an arithmetically erroneous and incorrect grade given by the course instructor and the favored and preferential treatment given to student athletes, constituting blatant 'academic double standards' and 'academic discrimination' practised by Clemson University.

BACKGROUND :

The petitioner initially enrolled into Clemson University in August 1988 into the Masters program in Electrical Engineering. In one of the courses taken by the petitioner that was taught by course instructor Thomas Drake, the petitioner was assigned an incorrect grade of 'D'. When the petitioner's attempts to have the situation resolved by the instructor failed, the petitioner took the matter to the graduate academic grievance committee, comprising of at least three University employees, holding bonafide doctorates and two students.

Between February 1989 and November 1989, the course instructor and the grievance committee provided the petitioner with the following arithmetically erroneous and incorrect total computations of his final grade :

A total of 68.9% on February 14, 1989

A total of 68.9% on April 14, 1989

A total of 65.9% on or about September 25, 1989

A total score of 65.9% on October 23, 1989

A total score that calculated to 64.445% on November 3, 1989

A total score of 69.04% on November 10, 1989

A total score of 69% on November 14, 1989

The petitioner met with the Vice President and the President of the University and indicated to them the manner in which he had been treated with threats and indifference by the members of the grievance committee, that the grievance committee had deliberately delayed taking action on his case for more than six months, in full violations of published University policies and that each and every one of the total score computations of his

grade calculated by the instructor and the grievance committee was arithmetically incorrect and erroneous. However, the President of the University decided to concur with the grievance committee's findings.

The letter from the President of the University to the petitioner, informing him of the final decision was mailed to the petitioner with an incorrect address. The U.S. Postal Service returned this letter to the Office of the President without delivering it to the petitioner. The petitioner was finally able to personally pick up the letter from the Office of the President on January 19, 1990. Subsequent to the petitioner's reading and understanding of the President's final decision on January 19, 1990, the petitioner received another letter from the Graduate School, indicating that the Registrar had been informed to dismiss the petitioner from the University, on or about January 25, 1990, only after the reading and understanding of which the petitioner fully realized that he had indeed been dismissed from Clemson University.

The petitioner took this matter up with state and federal authorites and Senators. When everything failed to change the situation, the petitioner filed his initial suit in the U.S. District Court on January 20, 1993, well within the three year limitation of statute.

The U.S.District Court dismissed the petitioner's case stating that the petitioner's statute of limitations ran from January 15, 1990 to January 16, 1993. Further, the U.S. District Court failed to even acknowledge the allegation that the petitioner had detailed in his initial suit regarding the blatant 'academic double standards' and 'academic discrimination' practised by Clemson University.

The petitioner filed an Appeal at the U.S. Court of Appeals for the Fourth Circuit that was also dismissed. The U.S. Court of Appeals quoted three totally irrelevant judgements passed on cases in the past and on the dubious strength of those alone, dismissed the petitioner's case. The petitioner then filed a Petition for Rehearing at the U.S. Court of Appeals for the

Fourth Circuit. This Petition for Rehearing was subsequently denied by the Court of Appeals and the petitioner has now brought his case before the United States Supreme Court.

The petitioner has provided physical and factual evidence to the U.S. Court of Appeals that :

1. The petitioner received the final decision of the President of Clemson University only on January 19, 1990.

2. The petitioner received the final letter of dismissal from Clemson University only on or about January 25, 1990.

3. Clemson University clearly practices 'academic double standards' and 'academic discrimination' by retaining academically deficient student athletes indefinitely, while dismissing the petitioner on the basis of an arithmetically incorrect grade.

The U.S. Court of Appeals has failed to recognize the facts and arguments made by the petitioner, by claiming that :

1. The petitioner knew of his dismissal from Clemson University as early as January 15, 1990.

2. The petitioner did not raise any claims of 'academic discrimination' or 'academic double standards' of sufficient specificity.

3. The petitioner's dismissal from Clemson University was a result of a letter grade that remained unchanged by the instructor throughout, thus giving the petitioner the complete knowledge that it would never be changed.

The petitioner has repeatedly made the argument that he was not aware of his dismissal from the University till around January 25, 1990, nor even of the final decision of the President on his grievance appeal till January 19, 1990. The petitioner has provided physical evidence in the form of letters to the Court of Appeals, clearly indicating this to be fact, that have been completely ignored.

The petitioner has always raised the claim since the filing of his initial suit that Clemson University treats certain students in a

favored and preferential manner, while dismissing the petitioner as a result of an arithmetically incorrect grade, clearly indicating academic double standards and academic discrimination. The petitioner has further provided physical evidence of this to the Court of Appeals in the form of news articles published by Clemson University on their campus, even bearing interviews with their Vice Presidents and other administrators about this academic double standard. All of this has been completely ignored by the Court of Appeals.

The petitioner has further proved to both the U.S. District Court and the U.S. Court of Appeals that his claim of gross negligence against Thomas Drake and Clemson University arise from the fact that simple arithmetic computations that could be completed even by gas station attendants and high school dropouts, were repeatedly computed incorrectly, even with the combined efforts, and the aid of computers, of at least four employees of Clemson University, including the instructor, all holding bonafide doctorates.

The final decision on the petitioner's grade appeal further did not necessary mean that the petitioner was dismissed from the University. It was only upon receiving the letter from the Graduate School on or about January 25, 1994, that the petitioner fully realized that he had indeed been dismissed from the University.

As regards the policy practised at Clemson University pertaining to 'academic discrimination' and 'academic double standards', the petitioner details some of the quotes from the newsmagazine article already provided to the Court of Appeals for the Fourth Circuit :

1. The average GPR (grade point ratio) of six teams fell between Fall 1988 and Fall 1989. The volleyball team made the biggest fall from 2.85 in 1988 to 2.52 in 1989. The GPR for varsity football fell from 2.07 in 1988 to 1.90 in 1989. The men's tennis and swimming teams, the soccer teams and the women's track team also fell in average GPRs.

2. Perhaps IPTAY should crack down on these presumptious administrators, instead of wasting precious time and effort on ACADEMICS (of all things). This IS Clemson University after all. What are these student athletes here for anyway - an education ? Get real.

3. The fact remains that you enjoy a privileged status at a institute of learning which due not your superior academic performance, but rather the fact that you play ball.

4. The purpose of a college, however, is education. Advantages should be given to underprivileged students with potential, not athletics.

5. But student athletics deserves special emphasis because it's the main money maker for the school!

6. I'm sure the honors students are tired of being told that they are so special, their housing and scheduling priorities rank just below those of the athletes. Wow. A rare privilege indeed and an honor.

As the petitioner has repeatedly indicated since the initial filing of his suit in the U.S.District Court, the academic double standards and academic discrimination policies exist at Clemson University. The Court of appeals has applied the judgement of "Beaudett v. City of Hampton" and stated that the petitioner has never raised a claim of sufficient specificity. This is totally incorrect, since the petitioner has raised several claims in his initial suit, his appeal against the Motion to Dismiss, his Appeal to the Court of Appeals and his Petition for Rehearing at the Court of Appeals, each and every one of them stating the simple fact that Clemson University retains student athletes with academic deficiencies indefinetely while dismissing the petitioner as a result of an arithmetically incorret grade that still cannot be computed correctly by the University employees, including the instructor, all of whom have bonafide doctorates and years of teaching experience.

The Court of Appeals has dismissed this issue indicating that the petitioner did not raise a claim of sufficient specificity and

applied the judgement of an irrelevant case "Beaudett v.City of Hampton". In this case, Beaudett recounted his fall over the concrete barrier, his desire to charge the city with gross negligence and his hope that "perhaps the jury will tell them what to do." No other relief was requested or anticipated. In the petitioner's case, the petitioner has clearly indicated to the Courts from the filing of his initial suit by drawing clear logical conclusions that if the privileged student athletes are retained forever as students at Clemson University, the petitioner's dismissal was discriminatory, hasty, premature and unjust. The petitioner has requested specifically from the very beginning that he should be reinstated, awarded his degree and be provided monetary compensation for his losses.

The petitioner hs also clearly indicated to the Court of Appeals, with proof that the letters from the President and the Graduate School indicating that his grievance appeal was over and that he ws dismissed from the University, were received by the petitioner only on January 19, 1990 and on or about January 25, 1994,

respectively. The Court of Appeals has incorrectly applied the judgement of "Nowlin v. General Tel Co.", wherein the Plaintiff, John Nowlin filed a complaint more than six years after he had been discharged. There is a large difference between the filing of a complaint after six years and filing a complaint based on the actual date that it was received. According to the Corpus Juris Secundum, 66 C.J.S. 18 , page 66 : "service of a notice is not effected until the notice comes into the hands of the one to be served and he acquires knowledge of its contents". Moreover, according to the Courts in this country, any complaint, notice or document is deemed delivered if mailed within the set deadline or personally delivered to an authorized official. In the petitioner's case, the letter from the President of Clemson University was never received because it was never deliverd. It was never delivered because it bore an incomplete address and was therefore returned by the U.S. Postal Service to the President's Office.

REASONS FOR GRANTING THE WRIT

In reference to this case, the petitioner has clearly proved the following :

The petitioner was dismissed because of a grade that was computed incorrectly not only by the course instructor, but also three or four other University faculty and administrators, with bonafide doctorates and years of experience, not just once, but a total of seven times. The petitioner has clearly proved that his dismissal occurred as a result of gross negligence by the respondents of this case.

The petitioner was dismissed inspite of the fact that scores of academically deficient student athletes are constantly being retained, even to this day by Clemson University, simply because they make money for the University, clearly constituting academic double standards and academic discrimination.

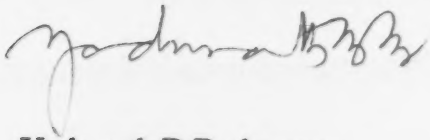
The University is infact being run and managed by the administrators as a profit oriented business and not an institute of

learning or an institution of of academic excellence, constituting complete fraud of the funds received from the State Government. The petitioner clearly did not possess advance knowledge of the fact that the President had made a final decision on his grievance appeal nor that he would be dismissed immediately as a result of that decision, since there is absolutely no proof or concrete evidence provided by the respondents in the last year and a half that this case has been in the courts to indicate so. The petitioner was only made aware of the end of his grievance process on January 19, 1994 and not a single day earlier. Thus the petitioner's suit filed on January 20, 1994, ie clearly within the three year limitation of statute.

CONCLUSION

For the reasons stated, the Writ of Certiorari should issue to review the judgement of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,



Yadunath B.Badarayan

175 South Reynolds Street, #K118

Alexandria, VA 22304

Tel. (703)-212-7118

A-1

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 93-2185

YADUNATH B. BADARAYAN,

Plaintiff - Appellant

versus

THOMAS DRAKE; CLEMSON UNIVERSITY,

Defendants - Appellees

Appeal from the United States District Court for the District of South Carolina, Greenville. G. Toss Anderson, Jr., District Judge. (CA-93-109-3AK)

Submitted : April 19, 1994 Decided: June 16, 1994

Before PHILLIPS, NIEMEYER, and LUTTIG, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Yadunath B. Badarayan, Appellant, Pro Se. Floyd Matlock Elliot, HAYNSWORTH, MARION, MCKAY & GUERARD, Greenville, South Carolina for Appellees.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

PER CURIAM:

Appelant appeals from the district court's order granting summary judgement against Appelant in his diversity action . Our review of the record and the district court's opinion accepting the recommendation of the majistrate judge discloses that this appeal is without merit. Accordingly, we affirm substantially on the reasoning of the district court. Badarayan v. Drake, No. CA-93-109-3AK (D.S.C. Aug 11, 1993). To the extent that Appelant appeals the district court's failure to address his vaguely pled claims of discrimination by Appellees, we find that Appellant did not state a claim of sufficient specificity for

the district court to address. See Beaudett v. City of Hampton, 775 F.2d 127, 1278 (4th Cir. 1985), cert denied, 475 U.S. 1088 (1986). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED

July 13, 1994

No. 93-2185

CA-93-109-3AK

YADUNATH B. BADARAYAN,

Plaintiff- Appellant

v.

THOMAS DRAKE; CLEMSON UNIVERSITY,

Defendants - Appellees

ORDER

The appellant has filed a petition for rehearing.

The Court denies the petition for rehearing.

For the Court,

/s/ Bert M. Montague

CLERK